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REPORT No. 121/17
PETITION 70-07
REPORT ON ADMISSIBILITY

JOSÉ FERNANDO MONTORO ALVARADO
PERU

Approved by the Commission at its session No. 2098 held on September 7, 2017
164th Extraordinary Period of Sessions

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PETITION P-70-07
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 PERU
 SEPTEMBER 7, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	José Fernando Montoro Alvarado
Alleged victim:	José Fernando Montoro Alvarado
State denounced:	Peru
Rights invoked:	Articles 8 (Right to a Fair Trial) and 23 (Right to Participate in Government) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	January 22, 2007
Additional information received at the initial study stage:	February 8, 2007
Date on which the petition was transmitted to the State:	June 10, 2011
Date of the State's first response:	December 3, 2014
Additional observations from the petitioning party:	December 8, 2015

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (instrument of ratification deposited on July 28, 1978)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (Right to a Fair Trial), 23 (Right to Participate in Government) and 25 (Right to Judicial Protection) of the ACHR, in relation with its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on November 19, 2006
Timeliness of the petition:	Yes, on January 22, 2007

¹ Pursuant to provisions in Article 17.2.a of the IACHR Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion or in the decision on the present matter.

² Hereinafter, "the American Convention," "the Convention" or "the ACHR."

³ The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner and alleged victim indicates that on December 15, 2002 elections took place in the Village of Víctor Raúl Haya de la Torre, Province of Trujillo, Department of Huanchaco, and that he was elected Village Mayor for the term 2002-2004. He denounces, however, that he was not able to take office because his main opponent, Paula Espejo, contested said result before the District Municipality of Huanchaco. This challenge led to a series of administrative and judicial proceedings that did not settle the matter until 2005, by which time the alleged victim's term in office had expired. The petitioner stresses that his rights were violated from the time that the challenge to his election to the mayoralty was heard by the District Municipality of Huanchaco, since under the electoral rules of the village where he was elected, this type of challenge must be filed before the Federal Election Commission of Peru.

2. As background information, the petitioner informs that the proceedings filed against him are due to a pattern of "power abuse" by regional authorities. According to him, these authorities "exploit the land" of the inhabitants of Víctor Raúl Haya de la Torre village. Said authorities allegedly sought to preserve that *status quo* by preventing him from taking office, as otherwise, he says, they would not have been able to continue with such abuses.

3. As regards to the administrative trial, it started when his main opponent challenged the election result before the District Municipality of Huanchaco. This municipality found the appeal groundless and confirmed the electoral result by Resolution No. 051-2002 of December 20, 2002. Subsequently, it forwarded the file to the Provincial Municipality of Trujillo so that the latter would appoint the corresponding authorities. However, the provincial body noted that the parties had not been notified of the district municipality's decision; as a result, it returned the file. Once the decision was notified, the opponent filed an appeal, and the case file was brought before the Provincial Municipality of Trujillo on April 8, 2003 so that it would rule on the challenge.

4. Since thirty days passed without the Provincial Municipality of Trujillo's ruling on the matter, the petitioner believed that a constructive rejection had been established to the detriment of Mrs. Espejo's claims. In view of this and to ensure his rights, the petitioner lodged an appeal for legal protection with the Fourth Civil Court (File No. 2016-2003, lodged on June 13, 2003). The appeal was dismissed by Resolution No. 11 of September 19, 2003, for lack of exhaustion of remedies in the administrative jurisdiction. Therefore, on September 30, 2003, the petitioner appealed against the dismissal before said court. After filling this legal remedy for which the petitioner filed a complaint for procedural delay, the case was brought before the Second Civil Court of the Higher Court of Justice of La Libertad region (File No. 1526-2003) on October 2, 2003.

5. By Resolution No. 18 dated March 1, 2004, the Second Civil Court of the Higher Court of Justice of La Libertad revoked the lower-instance resolution, on the grounds that the municipalities did not submit documents proving the petitioner's lack of exhaustion of remedies in the administrative jurisdiction. The Court ordered the return of the proceedings to the Fourth Civil Court of Trujillo for the settlement of the complaint. Nevertheless, by Resolution No. 32 of October 27, 2004 (File No. 2016-03), the trial court dismissed again the appeal for legal protection, invoking again the exception concerning the lack of exhaustion of remedies in the administrative jurisdiction. In view of this, the petitioner presented another appeal before the same court, which again brought the proceedings before the Second Civil Court of the Higher Court of Justice of La Libertad (File No. 2313-2004). This court rejected the constitutional appeal, confirming the lower-instance judgment by Resolution No. 40 of June 3, 2005.

6. In view of the last unfavorable decision, the petitioner filed a constitutional remedy before the Constitutional Court (File No. 5664-2005), which rejected it by a resolution dated November 14, 2005. In its final ruling, the Constitutional Court found that the alleged violation was irreparable by then in view of the passing of time, as there would be no point in settling proceedings in which the matter is moot. This judgment was attached to the second-instance case file (File No. 2313-04) by Resolution No. 43 of October 24, 2006 of the Second Civil Court of the Higher Court of Justice of La Libertad, and was notified that same day. The

decision was also attached to the lower-instance proceedings (File No. 2016-03) by Resolution No. 34 of November 8, 2006 of the Fourth Civil Court of Trujillo, notified on November 13, 2006.

7. To conclude, the petitioner believes that in view of these facts his rights to a fair trial and to participation in government were violated. He claims that the link between them is narrow since the delay of both the administrative bodies and the courts in settling the matter prevented him from taking the office for which he had been elected, and that the delay was such that the violation became irreparable because of the passing of time.

8. On the other hand, the State considers that there was no such violation of the rights invoked by the petitioner and requests the Commission to declare this petition inadmissible. The State claims in general that the federal legal framework recognizes the municipalities' competence to hear cases on the election of authorities in inhabited areas and that, therefore, at the time of the facts, both district and provincial municipalities were competent to rule on matters concerning the election of authorities for deputy municipal councils. Likewise, as to the return of the case file to the district municipality, the State indicates that this cannot be seen as a violation of due process since it was the reparation of the requirement of notification. Moreover, regarding the deadline for the provincial municipality to rule on the appeal, the State claims that the petitioner's discontent with the municipalities' performance was heard in court through an appeal for legal protection filed by the petitioner himself.

9. The State believes that the assessment of the judicial authorities' performance must involve a consideration of the time needed by judicial bodies to issue a final judgment before the violation will become irreparable. It asserts that, in this particular case, the proceedings for constitutional remedy filed by the petitioner lasted two years and four months, which is a relatively short time considering that usually proceedings brought before the Constitutional Court last much longer. In addition, it indicates that in view of the likelihood that such type of violations will become irreparable, the federal legal framework establishes precautionary measures to avoid this. It claims that considering the time factor, the petitioner could have requested a precautionary measure but failed to do so. Finally, it indicates that it is necessary to analyze the petitioner's own performance during the legal proceedings, since the annulment issued by the Second Civil Court of the Higher Court of La Libertad, in file No. 1526-2003, was based on the fact that there was no proof that an appeal remedy had been filed, which cannot be attributed to the State or lead to its international responsibility.⁴

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. The petitioner claims that the domestic remedies were exhausted by the ruling issued by the Constitutional Court on November 14, 2005 of which he was allegedly notified on November 19, 2006. The State, for its part, does not challenge the petition's compliance with the requirements of exhaustion of domestic remedies and timeliness under the American Convention. In this regard, the Commission, based on the arguments brought by the parties and the information in the case file, notes that the facts denounced by the petitioner were heard by different administrative and judicial bodies, and that the final resolution was issued by the Constitutional Court on November 14, 2005. Consequently, the IACHR concludes that this petition meets the requirement of exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention.

11. Moreover, the Commission notes that according to the petition the petitioner was notified of the final resolution on November 19, 2006, and the petition was received on January 22, 2007; as a result, it was submitted within the six months established in Article 46.1.b of the American Convention.

⁴ In this regard, the Commission notes that the State considers the petitioner responsible for said annulment issued by the Second Civil Court of the Higher Court of Justice of La Libertad. However, according to the information available from the file of the petition in this stage, the party that did not submit any supporting documents in those proceedings was the Municipality of Trujillo.

VII. COLORABLE CLAIM

12. In view of the elements of fact and law presented by the petitioner, which constitute the alleged violation of the rights to participate in government and to receiving timely judicial protection, the Commission believes that if the claims are proved, all of them might establish violations of Articles 23 (Participation in Government), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, in relation to its Article 1.1 (Obligation to Respect Rights), to the detriment of José Fernando Montoro Alvarado.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 1.1 (Obligation to Respect Rights), 8 (Fair Trial), 23 (Participation in Government) and 25 (Judicial Protection) of the American Convention on Human Rights;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of México, on the 7 day of the month of September, 2017. (Signed): Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.